

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

MID-ATLANTIC RESTAURANT GROUP
LLC d/b/a KELLY'S TAP ROOM

and

Case 04-CA-162385

ROBIN C. HELMS, an Individual

RESPONDENT'S MOTION FOR A BILL OF PARTICULARS

Respondent, by and through its undersigned attorneys, hereby files the following motion for a Bill of Particulars and in support thereof avers as follows. Respondent asserts that there was not sufficient information in the Complaint in this matter for it to properly defend itself against the allegations made. The Complaint charges that Robin C. Helms was terminated for engaging in "concerted activity" under the NLRA. However, the Complaint is entirely devoid of any assertion of how Ms. Helms' actions constituted "concerted activity" or could have been construed as such.

The NLRA does not precisely define what exactly constitutes "concerted activity" within the meaning of the Act. See NLRB v. City Disposal Systems, Inc., 465 U.S. 822, 830-31 (1984) ("The term 'concerted activit[y]' is not defined in the Act but it clearly enough embraces the activities of employees who have joined together in order to achieve common goals."). While there are circumstances in which the actions of an individual can be part of concerted activity, there must be some link to fellow employees. See id. at 831-833.

The Supreme Court has stated that "at some point an individual employee's actions may become so remotely related to the activities of fellow employees that it cannot reasonably be said that the employee is engaged in concerted activity." See id. at 833 n. 10. Therefore, if an employer were to "discharge an employee for purely personal 'gripping,' the employee could not

claim the protection of § 7.” See id. There must be some link between the employee complaining and other employees or the activity of the employee cannot be said to be covered by the protections of the NLRA. See Snyder v. Dietz & Watson, Inc., 837 F. Supp. 2d 428, 454 (D.N.J. 2011) (“An individual’s action, even if presumably of interest to other employees, is not in itself ‘concerted activity’ under the NLRB.”).

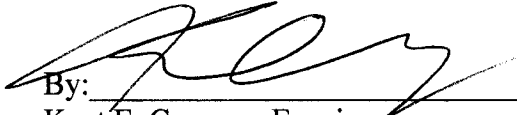
The Board has made no effort of any kind to allege any facts, which suggest that the conduct of Ms. Helms as alleged, even if true, was anything more than her individual complaints to her employer. The Board has failed to allege a single other affected employee or that Ms. Helms was taking action on behalf of anyone other than herself. Respondent is unable to properly defend itself without proper notice of the facts leading to the conclusion that there was “concerted activity” in this matter.

Absent these particulars, the charges against Respondent are not sufficiently precise to allow Respondent to prepare for a hearing. A bill of particulars allows a respondent to identify with sufficient particularity the nature of the complaints pending against respondent, thereby enabling him to prepare for trial and to prevent surprise.

Respondent seeks only critical information, i.e. the actions taken or considered taken for the interest of anyone other than Ms. Helms and the facts to support that notion. This is a narrow and precise item of information that, in fairness, should be made available to Respondent. As drafted, the Complaint does not supply enough information for the Respondent to properly challenge the Board’s characterization of the Ms. Helms’ conduct as it allows for some as yet undisclosed reasoning for alleged concerted activity. That is not sufficient to satisfy due process concerns.

The Board has done nothing to provide the minimum level of particularity to the Complaint. Without the requested Bill of Particulars, the Respondent is unable to adequately prepare for a hearing. It is therefore respectfully submitted that this motion be granted.

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CERTIFICATE OF SERVICE

I, Kent E. Conway, certify that a true and correct copy of the foregoing Motion was served via First Class U.S. Mail upon the following:

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Acting Regional Director
National Labor Relations Board
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615 Chestnut Street, 7th Floor
Philadelphia, PA 19106-4404

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